Frequently Asked Questions for Employees Excepted and Exempt From Furlough

Information for Excepted and Exempt Employees

Who are Exempt Employees?

o **Answer:** Employees are "exempt" from furlough if their work is funded by a source of funds that has not expired. This includes employees who are not funded by annually appropriated funds. It also includes those Presidential appointees who are not subject to a Federal employee leave system-i.e., who are entitled to an annual salary without consideration of the hours of duty required and thus cannot be placed in nonduty/nonpay status. (NOTE: Non-career SES and Schedule C employees do not fall into this category.) During the shutdown, exempt employees may take leave and record their time and attendance normally. In addition, exempt employees will be paid for holidays according to the normal procedures.

• Who are Excepted Employees?

- Answer: In the context of shutdown furloughs, the term "excepted employees" is used to refer to employees who are funded through annual appropriations who are nonetheless excepted from the furlough because they are performing work that, by law, may continue to be performed during a lapse in appropriations. "Excepted employees" include employees who are (1) performing emergency work involving the safety of human life or the protection of property, (2) performing minimal activities as necessary to execute an orderly suspension of agency operations related to non-excepted activities, or (3) performing certain other types of excepted work. Agency legal counsels, working with senior agency managers, are determining which employees are designated to be handling "excepted" and "non-excepted" functions.
- All other employees funded through annual appropriations are not able to work during a "shutdown" and will be furloughed.

What is a shutdown furlough?

Answer: A furlough is the placing of an employee in a temporary non-duty, non-pay status because of lack of funds. In the event that funds are not available through an appropriations law or continuing resolution, a "shutdown" furlough occurs. A shutdown furlough is necessary when an agency no longer has the necessary funds to operate and must shut down those activities which are not exempt or excepted pursuant to the Antideficiency Act.

• Why is the Department of the Treasury's Departmental Offices furloughing employees?

o **Answer:** Due to a lapse in annual appropriations (lack of funding).

Who is being furloughed?

• Answer: Most employees who perform functions paid by annually appropriated funds are being furloughed. The only exemptions or exceptions to the shut down and furlough are positions that perform functions of the type outlined below:

- Functions with a continuing source of funding, such as the Treasury Franchise Fund; or
- Functions expressly authorized by Congress to continue even without funding;
 or
- Functions for which authority to obligate funds is necessarily implied by statute; or
- Functions that are necessary to ensure the safety of human life or the protection of property; or
- Functions necessary for the discharge of the President's constitutional duties;
 or
- Activities necessary for a short period in order to ensure an orderly shutdown of operations.
- Are (a) bargaining unit employees impacted differently during a furlough, and (b) how do I know if I am in the bargaining unit?
 - Answer A: There is no distinction between positions held by bargaining unit employees and non bargaining unit employees in the event of a furlough due to a lapse in funding. Positions must meet certain criteria to be excluded from furlough. See above "who is being furloughed".
 - o **Answer B**: Employees may contact their supervisor or their business partner in the Office of Human Resources to determine their bargaining unit status.
- Will excepted employees receive the same furlough notice as furloughed employees?
 - o **Answer:** No, employees that are excepted from furlough will receive a separate notice informing them of their status and the expectations during the funding lapse.

Compensation, Benefits and Leave

Office of Personnel Management (OPM) Guidance for Shutdown Furloughs provides questions and answers concerning compensation, benefits, and leave.

LEAVE AND OTHER TIME OFF

- May an excepted employee take previously approved paid time off or be granted new requests for paid time off during a shutdown furlough?
 - Answer: No. When an excepted employee is not working or not performing excepted activities in compliance with the Antideficiency Act, he or she cannot be in a pay status. Excepted employees must be either performing excepted activities or furloughed during any absence from work. The furlough must be documented by a furlough notice. If an excepted employee refuses to report for work after being ordered to do so, he or she will be considered to be absent without leave (AWOL) and will be subject to any consequences that may follow from being AWOL.

Please note the following for DO positions funded through non- annual appropriations:

- If employees are in positions that are exempt from furlough because they are funded through non-annual appropriations (such as for OFR, OFS, DC Pensions, SBLF, FSOC, TEOAF, and SSBCI) the supervisor may allow employees to take leave.
- May an employee work during the furlough period to accumulate religious compensatory time off hours for religious observances?
 - Answer: An employee who is not exempt or excepted may not work during the furlough period, even to accrue religious compensatory time. However, an excepted employee may work additional hours for religious purposes if the employee is performing excepted activities, though the employee may not use those hours until after the lapse in appropriations is over.
- If an employee has properly scheduled "use-or-lose" annual leave before the start of the third biweekly pay period prior to the end of the leave year, but is unable to use some or all of the scheduled leave because of the furlough, does the furlough constitute an "exigency of the public business" that would permit an agency to restore the leave after the beginning of the new leave year?
 - Answer: Employees in this situation should make every effort to reschedule the "use-or-lose" annual leave for use before the end of the current leave year. However, if this is not possible due to a lapse in appropriations, agency heads (or their designees) are encouraged to use their discretionary authority to restore any lost annual leave by determining that the employee was prevented from using his or her leave because of an exigency of the public business namely, the need to furlough employees because of the lapse in appropriations.
- If any employee has properly scheduled use of "restored annual leave" that is due to expire at the end of the leave year (because it is the end of the 2-year restoration period) but that leave is canceled and lost due to lapse of appropriations, may the employing agency restore that leave again?
 - o **Answer:** Unfortunately, no unless Congress enacts legislation providing otherwise. There is nothing in existing law or regulation that allows restored annual leave to be restored a second time. In fact, the Comptroller General has determined that unused restored annual leave may not be restored after the expiration of the 2-year period.
- Will an employee "exempt" from furlough be paid for a holiday that occurs during a shutdown?
 - Answer: Employees are "exempt" from furlough if they are not affected by a lapse in appropriations. As such, an "exempt" employee will be paid for a holiday according to the normal rules governing holidays.
- What is the status of an "excepted" employee who does not perform work on a holiday that occurs during a shutdown?
 - o **Answer:** An "excepted" employee who does not perform work on a holiday must be placed in a furlough status for the holiday and must be provided written notice of the agency's decision to furlough. This is because during a lapse of appropriations all

affected employees be (1) at work performing excepted activities or (2) furloughed. This applies with respect to any period of time that is part of an affected employee's regularly scheduled administrative workweek, including a holiday.

- Will an "excepted" employee who does not work on a holiday that occurs during a shutdown furlough be paid for the holiday?
 - o **Answer:** No. An "excepted" employee who does not work on a holiday will be placed in a furlough status for the holiday and will not receive pay for a holiday that occurs during a shutdown furlough unless authorized by subsequent legislation.
- Can "excepted" employees be required to perform work on a holiday that occurs during a shutdown furlough?
 - Answer: Yes. Each agency must determine which excepted activities must be
 performed on a holiday in order to carry out functions related to such excepted
 activities. Failure to report to duty on a holiday is no different than failure to report to
 work on any other day.
- If an employee is scheduled to take approved unpaid leave during a shutdown furlough, should the agency provide the employee with a furlough notice?
 - Answer: It depends. If the employee is not expected to work during the furlough period (e.g., a 1-year period of leave without pay to accompany a military spouse overseas), then agencies are not required to provide the employee with a furlough notice. If, however, the employee is scheduled to return from unpaid leave to Federal service during the furlough period, the employee should be provided with a furlough notice (effective on the date of scheduled return), unless the employee is expected to be at work performing an excepted activity.
- If an employee is scheduled to take unpaid leave under the Family and Medical Leave Act (FMLA) during a shutdown furlough, should the agency provide the employee with a furlough notice?
 - Answer: It depends. If the employee is not expected to work during the furlough period (e.g., an employee who has just given birth and has requested 12 weeks of unpaid leave (leave without pay (LWOP) under the FMLA), the agency is not required to provide the employee with a furlough notice. If, however, the employee is scheduled to return from LWOP to Federal service during the furlough period, the employee should be provided with a furlough notice (effective on the date of scheduled return), unless the employee is expected to be at work performing an excepted activity. An employee on LWOP under FMLA during a shutdown furlough may not later substitute paid time off for the days of LWOP.
- Does LWOP under FMLA that is scheduled to be taken during a shutdown furlough period count toward the employee's 12-week FMLA leave entitlement?
 - o **Answer:** No.

- If an employee is scheduled to take paid leave or other paid time off under FMLA during a shutdown furlough, should the employee be furloughed?
 - Answer: Yes. A non-exempt employee must be placed in furlough status during any paid time off scheduled to be taken during a lapse in appropriations. If an employee is scheduled to take paid time off under FMLA during a shutdown furlough (either continuously or intermittently), the paid time off must be canceled and the employee must be furloughed for any period during which paid time off was scheduled. Thus, any days of scheduled paid time off are documented as furlough days. Any previously scheduled days of unpaid leave under FMLA will continue to be documented as LWOP. No days associated with a shutdown furlough period will be counted against an employee's 12-week FMLA leave entitlement.
- May an excepted employee be permitted to earn compensatory time off and credit hours (under flexible work schedules) during the shutdown period?
 - Answer: Yes. With agency approval, excepted employees may earn compensatory time off and/or credit hours subject to requirements found in 5 U.S.C. 5543 and 6120-6133; 5 CFR 550.114, 551.531, and part 610, subpart D; or other applicable authority. Each agency is responsible for approving the number of hours an excepted employee can work related to the performance of excepted activities. Employees will not be permitted to use earned compensatory time off or credit hours during the shutdown period.

COMPENSATION

- Will excepted employees be paid for performing work during a shutdown furlough? If so, when will excepted employees receive such payments?
 - o **Answer:** Agencies **will** incur obligations to pay for services performed by excepted employees during a lapse in appropriations, and those employees will be paid after Congress passes and the President signs a new appropriation or continuing resolution.

(**Note**: Presidential appointees who are not covered by the leave system in 5 U.S.C. chapter 63 are not subject to furlough, but are barred from receiving pay during a lapse in appropriations. These Presidential appointees will be paid after Congress passes and the President signs a new appropriation or continuing resolution.)

- Will employees who are furloughed get paid?
 - o **Answer:** Congress will determine whether furloughed employees receive pay for the furlough period.
- May an employee volunteer to do his or her job on a non-pay basis during a furlough period?

- Answer: No. Departmental Offices may not accept the voluntary services of an individual. (31 U.S.C. 1342)
- Can an excepted employee voluntarily report to work on a holiday?
 - Answer: No. Each agency must determine which excepted activities must be performed on a holiday, and which employees are needed to perform those functions. Employees who are not otherwise needed to perform excepted functions on the holiday must be placed in furlough status for that day.
- What pay entitlements will accrue to an excepted employee who performs work on a holiday during a shutdown furlough?
 - Answer: The Federal Government will be obligated to pay an excepted employee who performs work on a holiday according to the normal rules governing work on a holiday.

Media & Non-Media Questions

- What should I do if I am contacted for information on the Funding Lapse?
 - **Answer:** All media inquiries should be directed to the Press Office at (202) 622-2960 or Press@treasury.gov.

Travel

- What happens if I am on travel or scheduled to travel?
 - O Answer: The DO Travel Office is monitoring and tracking all known travel scheduled to occur through the possible lapse and will provide one-on-one guidance directly to the traveler/office as needed. All travel with a scheduled return on or before December 21 can process under standard procedures.

For any travel on or after December 22:

- No travel for furloughed employees.
- Travel for exempt/excepted employees should be highly limited and trips, to the extent possible, should be postponed, regardless of the funding source. All travel will be reviewed by the travel office, ASM office, OGC, and DCOS including a rereview of trips previously approved prior to the lapse, to ensure that the basis for each trip is an excepted function(s), and that trip participants are excepted or exempt. This requires re-clearing all trips previously approved through the exemption process to ensure that the purpose aligns with the excepted justification).
 - Note: this includes travel that spans December 22 that can't be postponed or moved.

^{**}All offices must submit the trip exemption request form, via MyTreasury, immediately if they have not already done so. We are only able to make final

determinations of the appropriateness of upcoming travel for trips that have a timely submitted form.

Treasury DO will apply the above approach to two types of travel. Note: the DO Travel Office has pulled records of submitted trip request to identify the travel which falls under one of the two categories.

• Trips that span December 22:

- o Travel with departures on Tuesday, December 18 or earlier
 - Under most circumstances, the traveler would be recalled on December 18 in the event of a lapse. Any waivers for the recall would need to be reviewed by OGC and Senior Leadership.
- o Travel with departure date of Wednesday, December 5– Friday, December 21 and return on or after December 22.
 - Depending on above approach, DO may permit excepted employee travel or preemptively cancel/postpone travel ahead of possible shutdown.

• Trips post-December 22:

OWhile there may be exceptions (i.e., confirmations needed ahead of time)
OGC and Senior Leadership will advise trip participants on the status of the travel if and when a lapse occurs. Travel is only permitted during a lapse for exempt or excepted employees performing exempt/excepted functions, as determined by OGC and Senior Leadership.

Travel Card Program

Will travel cards be active during a shutdown?

- Answer: DO has elected to keep the government issued travel cards active in the event of a lapse in appropriations.
 - Travel cards, per regulation, are only authorized for use when a traveler is in an
 approved TDY status. The DO Travel Office will run daily activity reports to
 identify any potential misuse. Any cards found to be misused will immediately be
 deactivated and standard disciplinary action will be taken upon the cardholder's
 recall to work. All balances, in full, are the responsibility of the cardholder.

Purchase Card Program

• Will I be able to make purchases on my purchase card?

- o **Answer:** Accounts for furloughed cardholders will be temporarily turned off.
 - Cardholders who are exempt because of their funding will continue to be able to use their cards for exempt purposes for charges under the micro-purchase limit of \$3,500.
 - All purchases approved for exempt or excepted purposes which are above the micro-purchase limit (\$3,501 or above) will be processed through IRS procurement.

• What if I have recurring or automatic payments on my purchase card?

o **Answer:** Please coordinate with your agency/organization finance officials and program coordinator to ensure that these payments are properly dispositioned in the event of a

shutdown, and that the agency does not incur new obligations in violation of the Antideficiency Act other than for excepted or exempted requirements.

For further questions on purchase cards please contact:

DO: Emily Morrison, Emily.Morrison@treasury.gov, or via phone at 202-622-0433 (office) 202-834-7160 (cell)

Payroll

Issue: A lapse in funding resulting in a government shutdown would impact the timely validation, certification, and processing of employees' timecards for Pay Period 25, December 9 through December 22, 2018. All employees, including furloughed and excepted employees, are asked enter their hours worked during the current pay period by Friday, December 21, 2018.

- Why are employees and supervisors (both excepted and furloughed) being asked to update their timecard information by December 21?
 - Answer: In the event of a lapse in funding on December 22, we want to ensure that timecard information is recorded so that it can be processed in a timely manner at the end of the pay period.
- What happens to the timecards if the shutdown only lasts a couple of days?
 - Answer: The Assistant Secretary for Management will assess what corrective timecard actions need to be taken for affected personnel once funding is restored. Any corrections to the Pay Period 25 or subsequent timecards will need to be made by the respective office timekeeper in a timely manner as to not impact financial reporting and ensure that employees are compensated for the time they worked.
- Is anyone permitted to work during a lapse in appropriation?
 - **Answer:** The following offices within Departmental Offices are not impacted by a lapse in appropriations, based on their funding sources:
 - Office of Financial Research
 - Small Business Lending Fund
 - Office of Financial Stability
 - Office of D.C. Pensions
 - Federal Financing Bank
 - Office of Technical Assistance
 - Financial Stability Oversight Council
 - Treasury Executive Office of Asset Forfeiture

Employees assigned to the above organizations (and others who have been informed by their managers that they are exempt from furlough due to their funding source, such as the Treasury Franchise Fund) should record their time in webTA, validate, and certify according to the regular schedule, and continue to do so for any subsequent pay periods during a lapse, unless otherwise informed by their supervisors.

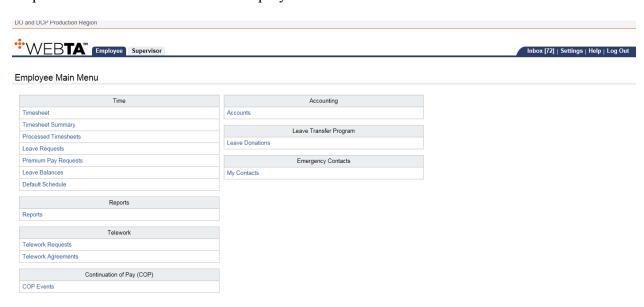
- Some employees are excepted to maintain health and safety, etc. How should such an employee's time be recorded in webTA in the event of a government shutdown?
 - Answer: All excepted and furloughed employees should record their time in webTA as "Furlough" in the T&A Data screen. This does not apply to exempt employees whose offices are not impacted by a lapse in appropriation, as referenced above.
- If excepted employees are required to report to work during a government shutdown, why is their time recorded as "Furlough" in webTA?
 - o **Answer:** The Departmental Offices personnel identified as excepted must record their time in webTA as "Furlough" because their salaries are funded from annual appropriations and cannot be paid by the agency absent another source of continuing funding.

Agencies will incur obligations to pay for services performed by excepted employees during a lapse in appropriations, and those employees will be paid after Congress passes and the President signs a new appropriation or continuing resolution.

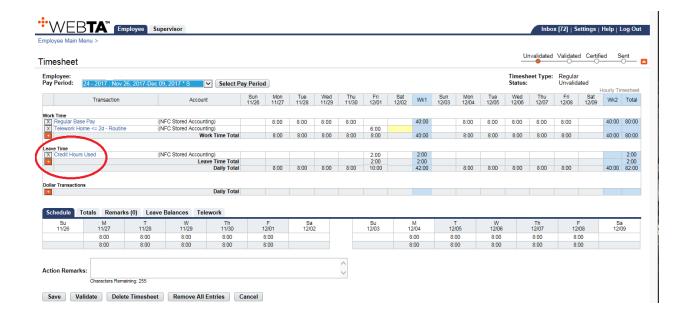
• Where do I begin to enter the "Furlough" time in webTA?

• **Answer:** The webTA screen shots below provide the step-by-step process for creating and entering the furlough leave in webTA.

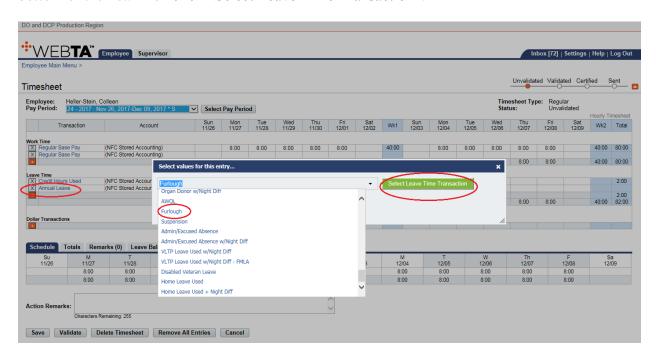
Step 1: Select "Timesheet" on the Employee Main Menu screen.



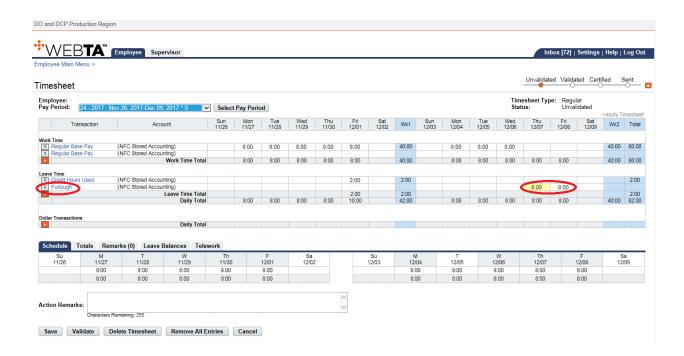
Step 2: Select the "+" button under "Leave Time"



Step 3: Click on the "Annual Leave" link to access the Transaction Code drop down menu. The employee or timekeeper should select "Furlough" which is the ninth option from the bottom of the list. Then click "Select Leave Time Transaction".



Step 4: Once the Furlough Leave category has been established the employee or timekeeper should enter the work hours for the days impacted by a lapse in appropriations based on the employee's work schedule. The hours should correspond to either a fixed 8-hour schedule or the appropriate hours based on the employee's Alternative Work Schedule.



The employee should validate the timecard once the furlough time is entered in webTA.

Who should I contact if I have trouble with webTA?

Answer: The Administrative Resource Center's Payroll and Processing Branch provides webTA technical assistance from 7:30 am to 5:00 pm at 304-480-8000, Option 4.

Transit Subsidy

• May I use my transit subsidy during a lapse in appropriation?

Answer: If you are excepted or exempt from furlough, you may use your transit subsidy as you normally would. If you are furloughed during a lapse, you must not use your transit subsidy, even if a balance is loaded on your SmarTrip Card. Unfortunately, this means that any personal balance you have stored on your card will not be accessible during a lapse in appropriations.